

REMARKS/ARGUMENTS

This is a reply to the Office Action dated November 15, 2006.

Claims 1-10 remain in this application. Claims 1-4 have been withdrawn. No claim has been canceled or added by this amendment.

Claims 5 and 6 have been amended based on the specification descriptions provided at page 4, lines 14-18. No new matter has been introduced by this amendment.

1. Response to § 112, 1st paragraph, rejection

In the most recent Office Action, claim 5 was rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement.

The reason for this rejection is understood to be that the previously added claim language of “in a directly adjacent” lacks verbatim support in the specification.

Applicants point out that the drawings form part of the original specification and disclosure. In this respect, the Patent Office’s attention is directed to precursor webs P and P’ in Figure 1, which are clearly and indisputably shown webs P and P’ as being assembled in a “direct adjacent” relationship to each other. The corresponding teachings of the specification make it quite clear to one skilled in the art that the directly adjacent webs P and P’ shown in Figure 1 correlate to claimed fabric layers (e.g., see page 5, lines 14-16, 29-32).

In view of the above reasons, this rejection is improper and should be withdrawn.

2. Response to §112, 2nd paragraph, rejection

Claim 5 was also rejected under 35 USC 112, second paragraph, for indefiniteness.

The Office Action indicates that claim 5 recites a nonwoven fabric comprised of two layers “in directly adjacent hydroentangled united arrangement”, and urges that the “process of hydroentanglement will mix the fibers so it is not clear how the one layer consists essentially of two types of fiber.”

Applicants respond that the “consists essentially” language, *inter alia*, serves to allow for fibers in either of the two layers that may be inter-tangled with the adjoining layer; however, two discrete distinguishable layers remain after the hydroentanglement with separate characteristics and not a single homogeneous mixture, as explained in the present specification (e.g., see page 4,

lines 14-18) and reflected even more clearly in the currently amended claims. This claim does not recite a homogenous mixture of fibers. It instead recites two layers. Applicants are entitled to be their own lexicographer and determine what is being claimed. Examination should proceed based on the actual claim recitations.

In view of the above, this rejection is improper and should be withdrawn.

3. Response to §103(a) rejection of Claims 5-10

Claims 5-10 have been rejected as being obvious under 35 USC 103(a) over newly cited Paire (US 5,236,769) in view of Kelly (US 2002/0004348) and Kierulff (US 6660503).

The present invention is directed towards a structurally stable, hydroentangled, flame-retardant nonwoven fabric comprising a first and a second layer. The first layer consists essentially of a blend of lyocell fiber and modacrylic fiber, and the second layer includes a blend of lyocell fiber, modacrylic fiber, and para-aramid fiber. Importantly, the lack of para-amid fiber in the first layer of the flame-retardant nonwoven fabric of the present invention masks the discoloration of the second layer that may occur from the presence of the para-amid fiber therein (see specification: page 4, lines 14-18).

None of the references relied upon in the new grounds of rejection teach or suggest the claimed invention.

The newly cited primary reference to Paire appears to be unrelated to the claimed invention by teaching a composite lining for a garment that consists of at least 3 layers: a textile layer, a film layer, and a nonwoven layer (see Col. 1 lines 62-68 and Col. 2, lines 1-7 and line 45).

Among other differences from Paire, the present invention does not require such a film layer and requires two nonwoven layers of particular blends, as recited in the present claims. As such, this Paire reference has no apparent relevance to the presently claimed invention. The effort in the Office Action devoted to transforming the claimed logical operator of “consisting essentially” into “comprising” language for purposes of the examination, despite the fact that the specification has indicated the criticality of the fiber content of each layer (see page 4, lines 14-18), does not alter the fact that Paire teaches a lining that consists of at least 3 layers, one of which is a film layer.

Kierulff also does not appear to be related to the claimed invention. Kierulff teaches a drastic modification of polysaccharides by means of a phenol oxidizing enzyme (Abstract). Kierulff indicates that cotton, viscose, lyocell, flax, ramie or blends thereof can be subjected to the enzymatic oxidation treatment as a preparation for textile manufacture, and that the resulting functionalized fibers can be used for a variety of specialty fabrics such flame retardant fabric amongst many others mentioned (col. 3, lines 33-46; col. 5, lines 56-64; col. 6, line 63 to col. 7, line 4).

Among other differences from Kierulff, the present invention avoids the need for such additional enzymatic oxidation processing treatments to be performed on the lyocell fibers used in the first and second layers. The presently claimed “consisting essentially of” language also serves to separate the presently claimed fibers from those requiring special treatment per Kierulff.

As to Kelly, Applicants point out that the subject matter of the Kelly published patent application shall not preclude patentability under Section 103 of Title 35 because the subject matter of the Kelly published patent application and the claimed invention were, at the time the claimed invention was made, owned by the same person or entity or subject to an obligation of assignment to the same person or entity. Therefore, the provisions of 35 U.S.C. 103(c) apply and Kelly is disqualified as an eligible reference under Section 103 against the present claims, and, accordingly, this obviousness rejection should be withdrawn.

In any event, Kelly discloses the advantages of blending aramid fibers and melamine fibers to create a flame retardant fabric, but does not discuss or disclose the recited elements of the currently pending claims. (See paragraphs [0016] and [0017] of Kelly).

Applicants dispute and request citation of prior art to support all assertions regarding the state of the art that were made in the Office Action without supporting factual evidence or documentation (e.g., see Office Action, page 5, first full paragraph, last two sentences).

In view of the above, the relied upon references for this rejection, either individually or in the proposed combination, fails to teach or suggest every claimed recitation. The present claims are not rendered *prima facie* obvious over the references.

In view of the above, reconsideration and withdrawal of this rejection is requested.

It is believed that this application is in condition for allowance, and notice of such is respectfully requested.

U.S. Patent Application No. 10/810,386
Amendment –After Non-Final Rejection
Reply to Office Action dated November 16, 2006

If the Examiner believes that a teleconference would be useful in expediting the prosecution of this application, the official is kindly invited to contact Applicant's undersigned representative of record.

Respectfully submitted,

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